

AMENDED IN ASSEMBLY APRIL 14, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## ASSEMBLY BILL

**No. 585**

**Introduced by Assembly Member Negrete McLeod**

February 16, 2005

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An act to amend Sections 22900, 22901, 22902, 22903, 22904, 22905, 22906, 22907, 22908, 22909, 22910, 22911, 22913, 22915, 22920, 22922, 22924, ~~and~~ 22925, 22926, *and* 22927 of, ~~and~~ to amend the heading of Chapter 28 (commencing with Section 22900) of Division 8 of, *and to add Sections 22903.1, 22903.2, and 22903.3 to*, the Business and Professions Code, relating to dealers.

### LEGISLATIVE COUNSEL'S DIGEST

AB 585, as amended, Negrete McLeod. ~~Dealers.~~ *Equipment dealers.*

(1) Existing law provides for the regulation of equipment dealers and defines equipment for those purposes as machines designed for agriculture, livestock, grazing, light industrial, and utility purposes. Under existing law, this definition excludes all-terrain vehicles, earth moving and heavy construction equipment, and mining and forestry equipment. Existing law authorizes an equipment dealer to establish a lien for unpaid charges and requires the dealer to file the lien with the Secretary of State.

This bill would expand the definition of equipment to include all-terrain vehicles and other machinery, equipment, implements, or attachments used for specified purposes and would designate a person or entity primarily engaged in the retail sale of equipment as a dealer or dealership. *The bill would also define various additional terms for the purpose of its provisions including "good cause," "single-line dealers," and "single-line suppliers."*

(2) Existing law makes unlawful various acts and practices by a supplier with respect to an equipment dealer. Specifically, existing law, among other things, prohibits discriminatory pricing and unreasonably withholding consent to a transfer of a dealership on a dealer's death. Existing law also prohibits a supplier from requiring a dealer to complete a substantial renovation or property acquisition without one year's notice as a condition to renewal or extension of the dealership contract, and requires the supplier to give the dealer a reasonable time to complete the renovation or acquisition.

This bill would revise and recast these provisions dealing with discriminatory pricing and establish procedures for approving or denying a transfer of a dealership upon a dealer's death. The bill would require a supplier to give a dealer 2 years to complete a renovation or acquisition. The bill would additionally prohibit a supplier from engaging in specified other coercive discriminatory acts with respect to a dealer.

(3) Existing law provides that a supplier shall not terminate, cancel, fail to renew, or substantially change the competitive circumstances of the dealer agreement, without cause, as defined.

This bill would make these provisions only applicable to a dealer contract between a dealer who is not a single-line dealer and a supplier who is not a single-line supplier. The bill would expand the definition of good cause for the purpose of this provision. The bill would also create a procedure for approving or denying a request for a sale or transfer of a dealer's business or an equity ownership interest where the supplier has contractual authority. The bill would provide that a single-line supplier may not terminate a dealer contract without good cause.

The bill would also require a supplier to accept or reject a warranty claim by written notice, as specified, to the dealer within 30 days after the supplier received the warranty claim and prescribe procedures for resolving those claims.

(4) Existing law requires suppliers to provide an opportunity annually for dealers to return a portion of their surplus inventory parts for credit. Existing law provides that the minimum lawful credit for returned parts is 95% of the net price, as listed in the supplier's current returnable parts list, as specified.

This bill would make a supplier liable for 110% of the total current net parts cost, plus interest at the maximum rate allowed by law from the payment due date until the date of payment and actual costs for

*any court or arbitration proceedings, including costs for attorney's fees and arbitrators if a supplier fails or refuses to pay for returned parts within 30 days.*

*(5) Existing law requires the supplier to repurchase inventory upon termination of a dealer agreement at specified prices based on fair market value or specified percentages of net cost.*

*This bill would define fair market value for these purposes and modify the percentages of net equipment cost to be paid for specified types of inventory. The bill would also prescribe the parties' rights and responsibilities with respect to handling, packing, and loading parts for return to the supplier. The bill would entitle the dealer to interest and costs if the payments for inventory are not timely made. The bill would also specify parts that are excluded from these repurchase requirements.*

*The bill would make numerous technical, conforming, and nonsubstantive changes.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The heading of Chapter 28 (commencing with  
2 Section 22900) of Division 8 of the Business and Professions  
3 Code is amended to read:

4  
5 CHAPTER 28. ~~DEALERS~~ FAIR PRACTICES OF EQUIPMENT  
6 MANUFACTURERS, DISTRIBUTORS, WHOLESALERS, AND DEALERS  
7 ACT  
8

9 SEC. 2. Section 22900 of the Business and Professions Code  
10 is amended to read:

11 22900. The Legislature finds and declares that the retail  
12 distribution, sales, and rental of agricultural, construction, utility,  
13 industrial, mining, outdoor power, forestry, and lawn and garden  
14 equipment, utilizing independent dealers operating under contract  
15 with the supplier vitally affects the general economy of the state,  
16 the public interest, and the public welfare. Therefore, the  
17 Legislature has determined that it is necessary to regulate the  
18 business relations between the dealers and suppliers as described

1 in this chapter and that a violation of this chapter contravenes an  
2 important public policy of this state.

3 SEC. 3. Section 22901 of the Business and Professions Code  
4 is amended to read:

5 22901. The following definitions apply for purposes of this  
6 chapter:

7 (a) *“Act” means the Fair Practices of Equipment*  
8 *Manufacturers, Distributors, Wholesalers, and Dealers Act.*

9 (b) *“Bulk sales law” means the Uniform Commercial*  
10 *Code-Bulk Sales as contained in Division 6 (commencing with*  
11 *Section 6101) of the Commercial Code.*

12 (c) *“Current parts price” means, with respect to current parts,*  
13 *the price for repair parts listed in the supplier’s price list or*  
14 *catalog in effect at the time the dealer contract is cancelled or*  
15 *discontinued or, for purposes of Section 22905, the price list or*  
16 *catalog in effect at the time the repair parts were ordered.*  
17 *“Current parts price” also means, with respect to superseded*  
18 *repair parts, the price listed in the supplier’s price list or catalog*  
19 *in effect at the time the dealer contract is canceled or*  
20 *discontinued for the part that performs the same function and*  
21 *purpose as the superseded part, but is simply listed under a*  
22 *different part number.*

23 (d) *“Current net parts cost” means the current parts price less*  
24 *any trade or cash discounts typically given to the dealer with*  
25 *respect to that dealer’s normal, ordinary course of orders of*  
26 *repair parts.*

27 (e) *“Dealer” means any person primarily engaged in the*  
28 *retail sale of equipment as defined in subdivision (i).*

29 (f) *“Dealer contract” means either an oral or written*  
30 *contract, agreement, or arrangement for a definite or indefinite*  
31 *period between a dealer and a supplier that provides for the*  
32 *rights and obligations of the parties with respect to the purchase*  
33 *or sale of equipment or repair parts. Notwithstanding the*  
34 *foregoing, if a dealer has more than one business location*  
35 *covered by the same dealer contract, the requirements of this act*  
36 *shall apply to the repurchase of a dealer’s inventory at a*  
37 *particular location upon the closing of that location.*

38 (g) *“Dealership” means the retail sale business engaged in by*  
39 *a dealer under a dealer contract.*

1     (h) “Demonstrator” means equipment in a dealer’s inventory  
2     that has not been sold, but has had its usage demonstrated to  
3     potential customers, either without charge or pursuant to a  
4     short-term rental agreement, with the intent of encouraging the  
5     potential customer to purchase the equipment.

6     (i) (1) “Equipment” means all-terrain vehicles and other  
7     machinery, equipment, implements, or attachments used for, or  
8     in connection with, any of the following purposes:

9     (A) Lawn, garden, golf course, landscaping, or grounds  
10    maintenance.

11    (B) Planting, cultivating, irrigating, harvesting, and producing  
12    agricultural or forestry products.

13    (C) Raising, feeding, tending to, or harvesting products from,  
14    livestock and any other activity in connection with those  
15    activities.

16    (D) Industrial, construction, maintenance, mining, or utility  
17    activities or applications, including, but not limited to, material  
18    handling equipment.

19    (2) Self-propelled vehicles designed primarily for the  
20    transportation of persons or property on a street or highway are  
21    specifically excluded from the definition of equipment.

22    ~~(b) “Dealer or dealership” means any person, partnership,~~  
23    ~~corporation, association, or other form of business enterprise~~  
24    ~~primarily engaged in the retail sale of equipment as defined in~~  
25    ~~subdivision (a).~~

26    ~~(c) “Supplier” means a person, partnership, corporation,~~  
27    ~~association, or other business enterprise engaged in the~~  
28    ~~manufacturing, assembly, or wholesale distribution of equipment.~~  
29    ~~The term shall also include any successor in interest, including a~~  
30    ~~purchaser of assets or stock, or a surviving corporation resulting~~  
31    ~~from a merger, liquidation, or reorganization of the original~~  
32    ~~supplier.~~

33    ~~(d) “Dealer agreement” means an oral or written contract or~~  
34    ~~agreement of definite or indefinite duration, between a supplier~~  
35    ~~and a dealer, which provides for the rights and obligations of the~~  
36    ~~parties with respect to the purchase or sale of equipment.~~

37    ~~(e) “Net cost” means the price the dealer paid to the supplier~~  
38    ~~for the equipment, less all applicable discounts allowed, plus the~~  
39    ~~freight costs from the supplier’s location to the dealer’s location.~~

1     ~~(f) “Net price” means the price listed for repair parts in the~~  
2 ~~supplier’s price list or catalog, less all applicable discounts.~~

3     (j) “Family member” means a spouse, parent, sibling, child,  
4 son-in-law, daughter-in-law, and lineal descendent, including  
5 those by adoption.

6     (k) “Good cause” means failure by a dealer to comply with  
7 the requirements imposed on the dealer by the dealer contract, if  
8 those requirements are not different from those requirements  
9 imposed on other similarly situated dealers in this state.

10    (l) “Index” means the United States Department of Labor,  
11 Bureau of Labor Statistics purchase price index for construction  
12 machinery series identification number pcu333120333120, or  
13 any successor index measuring substantially similar information.

14    (m) “Inventory” means equipment, repair parts, data process  
15 hardware or software, and specialized service or repair parts.

16    (n) “Major shareholder” means a shareholder with 51 percent  
17 or greater interest in a dealership.

18    (o) “Net equipment cost” means the price the dealer actually  
19 paid to the supplier for equipment, plus (1) freight, at truckload  
20 rates in effect as of the effective date of the termination of a  
21 dealer contract, if freight was paid by the dealer from the  
22 supplier’s location to the dealer’s location and (2)  
23 reimbursement for labor incurred in preparing the equipment for  
24 retail sale or rental, which labor will be reimbursed at the  
25 dealer’s standard labor rate charged by the dealer to its  
26 customers for nonwarranty repair work; provided, however, if a  
27 supplier has established a reasonable setup time, that labor will  
28 be reimbursed at an amount equal to the reasonable setup time in  
29 effect as of the date of delivery multiplied by the dealer’s  
30 standard labor rate.

31    (p) “Person” means an individual, corporation, partnership,  
32 limited liability company, trust, or any and all other forms of  
33 business entities, including any other entity in which a person  
34 has a majority interest or of which a person has control, as well  
35 as the individual officers, directors, and other persons in active  
36 control of the activities of each entity.

37    (q) “Repair parts” means all parts and products related to the  
38 service or repair of equipment, including superseded parts.

39    (r) “Single-line dealer” means a dealer that has (1) purchased  
40 construction, industrial, forestry and mining equipment from a

1 single supplier constituting 75 percent of the dealer's new  
2 equipment, calculated on the basis of net cost; and (2) a total  
3 annual average sales volume in excess of \_\_\_\_\_ dollars (\$\_\_\_\_)  
4 for the three calendar years immediately preceding the  
5 applicable determination date; provided, however, the sales  
6 threshold shall be increased each year by an amount equal to the  
7 current sales threshold multiplied by the percentage increase in  
8 the index from January 1 of the immediately preceding year to  
9 January 1 of the current year.

10 (s) "Single-line supplier" means the supplier that is selling the  
11 single-line dealer construction, industrial, forestry and mining  
12 equipment constituting 75 percent of the dealer's new equipment.

13 (t) Supplier" means any person engaged in the business of  
14 manufacturing, assembly or wholesale distribution of equipment  
15 or repair parts. The term "supplier" and the provisions of this  
16 act shall be interpreted liberally and shall not be limited to  
17 traditional doctrines of corporate successor liability or take into  
18 account whether a (1) a successor expressly assumed the  
19 liabilities of the supplier or (2) there has been one or more  
20 intermediate successors to the initial supplier. The obligations of  
21 a supplier shall consequently apply to any actual or effective  
22 successor in interest to a supplier, including, but not limited to, a  
23 purchaser of all or substantially all of the assets of a supplier or  
24 all or substantially all of the assets of any division or product  
25 line of a supplier, any receiver, trustee, liquidator, or assignee of  
26 the supplier, or any surviving corporation resulting from a  
27 merger, liquidation, or reorganization of the original or any  
28 intermediate successor supplier. Purchasers of all or  
29 substantially all of the inventory of a supplier or a supplier's  
30 division or product line shall constitute a purchaser of all or  
31 substantially all of the supplier's assets.

32 (u) "Terminate" means to terminate, cancel, fail to renew, or  
33 materially change the competitive circumstances of a dealer  
34 contract.

35 SEC. 4. Section 22902 of the Business and Professions Code  
36 is amended to read:

37 22902. ~~(a)~~—It shall be a violation of this chapter for a supplier  
38 to take any of the following actions:

1 ~~(1) Except as required by any applicable law or unless special~~  
2 ~~features or accessories are safety features or accessories required~~  
3 ~~by a supplier, to~~

4 *(a) To coerce or compel any dealer to order or accept delivery*  
5 *of any equipment or parts or any equipment with special features*  
6 *or accessories not included in the base list price of the equipment*  
7 *as publicly advertised by the supplier, which that the dealer has*  
8 *not voluntarily ordered, except as required by any applicable law*  
9 *or unless the equipment or repair parts are safety features*  
10 *required by the supplier.*

11 ~~(2)~~  
12 *(b) To coerce or compel any dealer to enter into—any*  
13 *agreement, whether written or oral, supplementary to an existing*  
14 *dealer agreement with the supplier, unless that supplementary or*  
15 *amendatory agreement any contract, whether written or oral, or*  
16 *amend an existing dealer contract with the supplier, unless the*  
17 *contract or amendment is imposed on all other similarly situated*  
18 *dealers in the state.*

19 ~~(3)~~  
20 *(c) To refuse to deliver to any dealer in reasonable quantities*  
21 *and within a reasonable time after receipt of the dealer's order,*  
22 *equipment covered by the dealer agreement contract specifically*  
23 *advertised or represented by the supplier to be available for*  
24 *immediate delivery or on an agreed upon delivery date. The*  
25 *failure to deliver the equipment shall not be considered a*  
26 *violation of this chapter act if the failure is due to prudent and*  
27 *reasonable restrictions on extension of credit by the supplier to*  
28 *the dealer, any breach of or default under the agreement contract*  
29 *by the dealer, an act of God, work stoppage or delay due to a*  
30 *strike or labor difficulty, a bona fide shortage of materials,*  
31 *freight embargo, or a business decision by the supplier to limit*  
32 *the production volume of the equipment and written notice is*  
33 *provided to the dealer within 30 days of that decision or other*  
34 *cause over which the supplier has no control.*

35 ~~(4)~~  
36 *(d) To terminate, cancel, or fail to renew a dealer agreement*  
37 *contract or—substantially materially change the competitive*  
38 *circumstances of the dealer agreement contract without good*  
39 *cause.*

40 ~~(5)~~



(e) To require as a condition of renewal or extension of a ~~dealership agreement~~ *dealer contract* that the dealer complete substantial renovation of the dealer's place of business or acquire new or additional space to serve as the dealer's place of business, unless the supplier provides at least one year's written notice of the condition that states all grounds supporting the condition. The supplier shall provide ~~a reasonable time~~ *not less than two years* for the dealer to complete the renovation or acquisition after the one year's notice period has expired.

~~(6) To discriminate in the prices charged for equipment of like grade and quality sold by the supplier to similarly situated dealers in this state. This paragraph does not prevent the use of differentials resulting from the differing quantities in which equipment is sold or delivered and does not prevent a supplier from offering a lower price in order to meet an equally low price of a competitor or the services or facilities furnished by a competitor. The provisions of this paragraph shall not apply to sales to a dealer for resale to any unit or agency of the United States government, the state, or any of its political subdivisions, or any municipality located within this state or to any major fleet account or to any organization for testing or demonstration.~~

~~(7)~~  
(f) *To discriminate, directly or indirectly, in prices charged between different dealers with respect to purchases of equipment or repair parts of like grade and quality and identical brand, where the effect of that discrimination may be to substantially lessen competition, tend to create a monopoly in any line of commerce, or injure, destroy, or prevent competition with any dealer who either grants or knowingly receives the benefit of the discrimination. However, different prices may be charged if (1) the differences are due to differences in the cost of manufacture, sale or delivery of the equipment or repair parts, or (2) the supplier can show that its lower price was made in good faith to meet an equally low price of a competitor and the lower price was made available to other dealers, or (3) the differences are related to the volume of equipment purchased by dealers if the supplier offers all other similarly situated dealers the same volume program.*

(g) To prevent, by contract or otherwise, any dealer from changing ~~the its capital structure of the dealership,~~ *ownership,* or

1 the means by which the dealership is financed, provided the  
2 dealer at all times meets any reasonable capital standards  
3 imposed by the supplier or as otherwise agreed to between the  
4 dealer and the supplier *and imposed on similarly situated*  
5 *dealers*, and provided this change by the dealer does not result in  
6 a change of the controlling interest in the executive management  
7 or board of directors, or any guarantors of the dealership.

8 (8)

9 (h) To prevent, by contract or otherwise, any dealer or any  
10 officer, member, partner, or stockholder of any dealer from  
11 selling or transferring any part of the interest of any of them to  
12 any other party or parties. However, no dealer, officer, partner,  
13 member, or stockholder shall have the right to sell, transfer, or  
14 assign the dealership or power of management or control of the  
15 dealership without the written consent of the supplier. ~~If a~~  
16 ~~supplier determines that the designated transferee is not~~  
17 ~~acceptable, the supplier shall provide the dealer with written~~  
18 ~~notice of the supplier's objection and specific reasons for~~  
19 ~~withholding its consent.~~

20 (9)

21 (i) To require a dealer to assent to a release, assignment,  
22 novation, waiver, or estoppel that would relieve any person from  
23 liability imposed by this section.

24 ~~(10) (A) To unreasonably withhold consent in the event of the~~  
25 ~~death of the dealer or the principal owner of the dealership, to the~~  
26 ~~transfer of the dealer's interest in the dealership to a member or~~  
27 ~~members of the family of the dealer or the principal owner of the~~  
28 ~~dealership, if the family member meets the reasonable financial,~~  
29 ~~business abilities and experience, and character standards of the~~  
30 ~~supplier. If a supplier determines that the designated family~~  
31 ~~member is not acceptable, the supplier shall provide the dealer~~  
32 ~~with written notice of the supplier's objection and specific~~  
33 ~~reasons for withholding its consent. A supplier shall have 90 days~~  
34 ~~to consider a dealer's request to make a transfer to a family~~  
35 ~~member. As used in this subparagraph, a "family member"~~  
36 ~~means and includes a spouse, parent, sibling, child, stepchild,~~  
37 ~~son-in-law, daughter-in-law, and lineal descendant, including~~  
38 ~~those by adoption of the dealer or principal owner of the~~  
39 ~~dealership.~~

~~(B) Notwithstanding subparagraph (A), if a supplier and dealer have duly executed an agreement concerning succession rights prior to the dealer's death, and if the agreement has not been revoked or otherwise terminated by either party, the agreement shall be observed.~~

~~(b) Notwithstanding the provisions of paragraphs (8) and (10) of subdivision (a) and without precluding any other permissible bases for withholding consent, a supplier may withhold consent to a transfer of interest in a dealership if, with due regard to regional market conditions and distribution economics, the dealer's area of responsibility or trade area does not afford sufficient sales potential to reasonably support a dealer. In any dispute between a supplier and dealer under this subdivision, the supplier shall bear the burden of proving that the dealer's area of responsibility or trade area does not afford sufficient sales potential to reasonably support a dealer. The proof offered shall be in writing.~~

*(j) To require any dealer to purchase goods or services as a condition of the sale by the supplier to the dealer of any equipment, repair parts, or other goods or services; except that nothing in this subdivision shall prohibit a supplier from requiring the dealer to purchase repair parts, special tools, and training reasonably necessary to maintain the safe operation or quality of operation in the field of any equipment offered for sale by the dealer.*

*(k) To coerce any dealer into a refusal to purchase equipment manufactured by another supplier.*

*(l) To penalize any dealer that purchases equipment or repair parts for sale manufactured by another supplier.*

*(m) To discriminate, directly or indirectly, between dealers of the same product line in filling an order placed by a dealer for retail sale or lease of equipment under a dealer contract.*

SEC. 5. Section 22903 of the Business and Professions Code is amended to read:

22903. (a) ~~Except where grounds for termination or nonrenewal of a dealer agreement or a change in the competitive circumstances of a dealer agreement are contained in paragraph (1), (2), (3), (4), (5), (6), or (7) of subdivision (b), a supplier shall give a dealer 90 days' written notice of the supplier's intent to terminate, cancel, or not renew a dealer agreement or change the~~

~~competitive circumstances of a dealer agreement. The notice shall state the reasons constituting cause for termination, cancellation, or nonrenewal and shall provide that the dealer has 60 days in which to cure any claimed deficiency. If the deficiency is rectified within 60 days to the satisfaction of the supplier, the notice shall be void. The contractual term of the dealer agreement shall not expire or the competitive circumstances of the dealer agreement shall not be changed by the supplier, without the written consent of the dealer, prior to the expiration of at least 90 days following this notice.~~

~~(b) This section shall only apply to a dealer contract between a dealer who is not a single-line dealer and a supplier who is not a single-line supplier.~~

*(b) Except as otherwise provided in this section, a supplier shall provide a dealer with at least 180 days prior written notice of termination of a dealer contract. The notice shall include all reasons constituting good cause for the termination and shall provide the dealer with 60 days to cure any claimed deficiency. If the deficiency is cured within 60 days, the notice of termination shall be void. A supplier may not terminate a dealer contract based on paragraph (11) of subdivision (c) unless the supplier gives the dealer notice of that action at least two years before the effective date of that action. If the dealer achieves the supplier's requirements for reasonable standards or performance objectives before the expiration of the two-year notice period, the notice shall be void and the dealer contract shall continue in full force and effect.*

*(c) No supplier, directly or through an officer, agent, or employee, may terminate, cancel, fail to renew, or substantially materially change the competitive circumstances of a dealership agreement without cause. "Cause" means failure by a dealer to comply with the requirements imposed upon the dealer by the dealer agreement, provided the requirements are not different from those requirements imposed on other similarly situated dealers in this state dealer contract without good cause. In addition, to the definition in subdivision (k) of Section 22901, good cause exists whenever the dealer has taken any of the following actions:*

1 (1) Transferred a controlling ownership interest in the  
2 dealership without the consent of the supplier, who shall not  
3 withhold consent unreasonably.

4 (2) Made a material misrepresentation or falsification of any  
5 record.

6 (3) Filed a voluntary petition in bankruptcy or has had an  
7 involuntary petition in bankruptcy filed against the dealer that  
8 has not been discharged within 60 days after the filing or is  
9 insolvent or in receivership.

10 (4) Pleaded guilty to or has been convicted of a felony  
11 involving an act of moral turpitude.

12 (5) Failed to operate in the normal course of business for  
13 seven consecutive business days, *without the consent of the*  
14 *supplier*, or has terminated the business.

15 (6) Relocated or established a new or additional dealer's place  
16 of business without the supplier's consent.

17 ~~(7) Failed to satisfy any payment obligation as it became due~~  
18 ~~and payable to the supplier, failed to promptly account to the~~  
19 ~~supplier for any proceeds of the sale of equipment, or failed to~~  
20 ~~hold such proceeds in trust for the benefit of the supplier.~~

21 ~~(8) Consistently engaged in business practices that are~~  
22 ~~detrimental to the consumer or supplier, including but not limited~~  
23 ~~to, excessive pricing, misleading advertising, failure to provide~~  
24 ~~service and replacement parts, or perform warranty obligations.~~

25 ~~(9) After receiving notice from the supplier of its requirements~~  
26 ~~for reasonable market penetration based on the supplier's~~  
27 ~~experience in other comparable marketing areas, consistently~~  
28 ~~failed to meet the supplier's market penetration requirements,~~  
29 ~~based upon available record information.~~

30 ~~(10)~~  
31 (7) *Materially defaulted under any chattel mortgage or other*  
32 *security agreement between the dealer and the supplier, or there*  
33 *has been a revocation of any guarantee of the dealer's present or*  
34 *future obligations to the supplier. However, good cause does not*  
35 *exist if a person revokes any guarantee in connection with or*  
36 *following the transfer of that person's entire ownership interest*  
37 *in the dealer unless the supplier requires that person to execute a*  
38 *new guarantee of the dealer's present or future obligations in*  
39 *connection with that transfer of ownership interest.*

1     (8) *Engaged in conduct that is injurious or detrimental to the*  
2 *dealer's customers, the public welfare, or the representation or*  
3 *reputation of the supplier's product.*

4     (9) *Consistently failed to meet building and housekeeping*  
5 *requirements, or failed to provide adequate sales, service, or parts*  
6 *personnel commensurate with the dealer-agreement contract.*

7     ~~(11)~~

8     (10) *Consistently failed to comply with the applicable*  
9 *licensing laws pertaining to the products and services being*  
10 *represented for and on the supplier's behalf.*

11     (11) *Consistently failed to meet and maintain the supplier's*  
12 *requirements for reasonable standards and performance*  
13 *objectives, if the supplier has given the dealer reasonable*  
14 *standards and performance objectives that are based on the*  
15 *manufacturer's experience in other comparable market areas.*

16     SEC. 6. *Section 22903.1 is added to the Business and*  
17 *Professions Code, to read:*

18     22903.1. (a) *This section shall only apply to a dealer*  
19 *contract between a dealer who is not a single-line dealer and a*  
20 *supplier who is not a single-line supplier.*

21     (b) *If a supplier has contractual authority to approve or deny*  
22 *a request for a sale or transfer of a dealer's business or an equity*  
23 *ownership interest in the business, the supplier shall approve or*  
24 *deny the request within 60 days after receiving a written request*  
25 *from the dealer. If the supplier has neither approved nor denied*  
26 *the request within the 60 day period, the request shall be deemed*  
27 *approved. The dealer's request shall include reasonable*  
28 *financial information, personal background, character*  
29 *references, and work history information for the acquiring*  
30 *persons. If a supplier denies a request made pursuant to this*  
31 *section, the supplier shall provide the dealer with a written*  
32 *notice of that denial that states the reasons for the denial. A*  
33 *supplier may only deny a request based on the failure of the*  
34 *proposed transferees to meet the reasonable requirements*  
35 *consistently imposed by the supplier in determining approval of*  
36 *transfers or approvals of new dealers.*

37     (c) *If a dealer dies and the supplier has contractual authority*  
38 *to approve or deny a request for the sale or transfer of the*  
39 *dealer's business or an equity ownership interest in the business,*  
40 *the dealer's estate or other person with authority to transfer the*

1 *dealer's assets shall have 180 days to submit to the supplier a*  
 2 *written request for a sale or transfer of that business or equity*  
 3 *ownership interest. If the request is timely submitted, the supplier*  
 4 *shall approve or deny that request in accordance with*  
 5 *subdivision (b). Notwithstanding any contrary provision of this*  
 6 *chapter, any attempt by a supplier to terminate the dealer*  
 7 *contract as a result of the death of a dealer shall be delayed until*  
 8 *there has been compliance with the terms of this section or the*  
 9 *180 day period has expired, as applicable.*

10 *(d) Notwithstanding subdivision (c), if a supplier and dealer*  
 11 *executed an agreement concerning succession rights prior to the*  
 12 *dealer's death, and if the agreement is still in effect, the*  
 13 *agreement shall be observed even if it designated someone other*  
 14 *than the surviving spouse or heirs of the decedent as the*  
 15 *successor.*

16 *SEC. 7. Section 22903.2 is added to the Business and*  
 17 *Professions Code, to read:*

18 *22903.2. (a) This section shall only apply to dealer contracts*  
 19 *between a single-line dealer and its single-line supplier.*

20 *(b) No supplier may terminate a dealer contract without good*  
 21 *cause. In addition to the definition in subdivision (k) of Section*  
 22 *22901, good cause exists whenever any one of the following is*  
 23 *applicable:*

24 *(1) There has been a closeout or sale of 65 percent or more of*  
 25 *the dealer's assets related to the equipment business or there has*  
 26 *been a commencement of a dissolution or liquidation of the*  
 27 *dealer.*

28 *(2) The dealer has changed its principal place of business or*  
 29 *added additional locations without prior approval of the*  
 30 *supplier, which shall not be unreasonably withheld.*

31 *(3) The dealer has materially defaulted under a chattel*  
 32 *mortgage or other security agreement between the dealer and the*  
 33 *supplier, or there has been a revocation or discontinuance of a*  
 34 *guarantee of a present or future obligation of the dealer to the*  
 35 *supplier.*

36 *(4) The dealer has failed to operate in the normal course of*  
 37 *business for seven consecutive days, without the consent of the*  
 38 *supplier, or has otherwise abandoned its business.*

39 *(5) The dealer has pleaded guilty to or has been convicted of a*  
 40 *felony involving an act of moral turpitude.*

1     (6) *The dealer has transferred an interest in the dealership, or*  
2 *a person with a substantial interest in the ownership or control of*  
3 *the dealership, including an individual, proprietor, partner or*  
4 *major shareholder, has withdrawn from the dealership or died,*  
5 *or a substantial reduction has occurred in the interest of a*  
6 *partner or major shareholder in the dealership. However, good*  
7 *cause does not exist if the supplier has consented to an action*  
8 *described in this paragraph.*

9     (c) *Except as otherwise provided in this subdivision, a supplier*  
10 *shall provide a dealer with at least 90 days written notice of*  
11 *termination. The notice shall state all reasons constituting good*  
12 *cause for termination and shall state that the dealer has 60 days*  
13 *in which to cure any claimed deficiency. If the deficiency is cured*  
14 *within 60 days, the notice shall be void. Notwithstanding the*  
15 *forgoing, if the good cause for termination is due to the dealer's*  
16 *failure to meet or maintain the supplier's requirements for*  
17 *market penetration, a reasonable period of time shall have*  
18 *existed where the supplier has worked with the dealer to gain the*  
19 *desired market share. The notice and right to cure provisions*  
20 *under this subdivision shall not apply if the reason for*  
21 *termination is for any reason set forth in subdivision (b).*

22     (d) *If a dealer dies, a supplier shall have 90 days in which to*  
23 *consider and make a determination on a request by a family*  
24 *member to enter into a new dealer contract to operate the*  
25 *dealership. If the supplier determines that the requesting family*  
26 *member is not acceptable, the supplier shall provide the family*  
27 *member with a written notice of its determination with the stated*  
28 *reasons for rejection. This section does not entitle an heir,*  
29 *personal representative, or family member to operate a*  
30 *dealership without specific written consent of the supplier.*

31     (e) *Notwithstanding subdivision (d), if a supplier and dealer*  
32 *have previously executed an agreement concerning succession*  
33 *rights prior to the dealer's death, and if that agreement is still in*  
34 *effect, the agreement shall be observed even if it designated*  
35 *someone other than the surviving spouse or heirs of the decedent*  
36 *as the successor.*

37     (f) *For purposes of this section, dealer assets shall not include*  
38 *land or buildings.*

39     SEC. 8. *Section 22903.3 is added to the Business and*  
40 *Professions Code, to read:*



1 22903.3. (a) If a dealer submits a warranty claim to a  
2 supplier while the dealer contract is in effect or within 60 days  
3 after the termination of the dealer contract, and if the claim is for  
4 work performed before the termination or expiration of the  
5 dealer contract, the supplier shall accept or reject that warranty  
6 claim by written notice to the dealer within 30 days after the  
7 supplier's receipt of the warranty claim. If the supplier accepts  
8 the warranty claim, the supplier shall pay the dealer or credit the  
9 dealer's account the entire amount owed with respect to the  
10 claim within 30 days of acceptance. If the supplier rejects the  
11 warranty claim, the supplier shall give the dealer written or  
12 electronic notice of the grounds for rejection. These reasons must  
13 be consistent with the supplier's reason for rejecting the  
14 warranty claims of other dealers, both in terms and manner of  
15 enforcement. If the supplier does not provide the dealer with  
16 grounds for rejection, the claim shall be deemed to be accepted.

17 (b) Any claim that is not approved by the supplier based upon  
18 the dealer's failure to properly follow the procedural or  
19 technical requirements for submission of the warranty claim may  
20 be resubmitted in proper form by the dealer within 30 days of  
21 receipt of the supplier's disapproval notification.

22 (c) Warranty work performed by the dealer shall be  
23 compensated in accordance with the reasonable and customary  
24 amount of time required to complete the work, expressed in hours  
25 and fractions multiplied by the dealer's established customer  
26 hourly retail labor rate, which shall have previously been made  
27 known to the supplier. Parts used in warranty repair work shall  
28 be reimbursed at the current net parts cost plus 15 percent and  
29 the cost of freight.

30 (d) For the purpose of this act, any repair work or installation  
31 of replacement parts with respect to the dealer's equipment in  
32 inventory or equipment of the dealer's customers at the request  
33 of the supplier, including work performed pursuant to a product  
34 improvement program, shall be deemed to create a warranty  
35 claim for which the dealer shall be paid pursuant to this section.

36 (e) A supplier may audit warranty claims submitted by its  
37 dealers for a period of up to one year. If the audit reveals an  
38 amount was misrepresented by the supplier, the supplier may  
39 charge its dealers the amount shown by the audit to be  
40 misrepresented. If a warranty claim is misrepresented, then

1 subsequent warranty claims submitted within the two-year period  
2 ending with the date of the audit may be audited. However, a  
3 supplier shall not audit a warranty claim more than once.

4 (f) The requirements of subdivisions (a), (b), and (c) apply to  
5 all warranty claims submitted by a dealer to a supplier where the  
6 dealer has complied with the supplier's reasonable policies and  
7 procedures for warranty reimbursement. A supplier's warranty  
8 reimbursement policies and procedures shall be deemed  
9 unreasonable to the extent they conflict with any of the  
10 provisions of this section.

11 (g) A dealer may choose to accept alternate reimbursement  
12 terms and conditions instead of the requirements of subdivisions  
13 (a), (b), and (c) if there is a written dealer contract between the  
14 supplier and the dealer that requires the supplier to compensate  
15 the dealer for warranty labor costs either as: (1) a discount in  
16 the pricing of the equipment to the dealer; or (2) a lump sum  
17 payment to the dealer that is made to the dealer within 90 days of  
18 the sale of the supplier's new equipment. If the requirements of  
19 this subdivision are met and alternate terms and conditions are  
20 in place, subdivisions (a), (b), and (c) do not apply and the  
21 alternate terms and conditions are enforceable. Nothing  
22 contained in this subdivision shall be deemed to effect the  
23 supplier's obligation to reimburse the dealer for parts in  
24 accordance with subdivision (c).

25 (h) If a supplier fails or refuses to pay for warranty work  
26 covered under this section within 30 days of the supplier's  
27 acceptance of the dealer's claim, the supplier shall be liable for  
28 110 percent of the total claim, plus interest at the maximum rate  
29 allowed by law from the payment due date until the date of  
30 payment, and actual costs for any court or arbitration  
31 proceeding, including costs for attorney fees and arbitrators.

32 ~~SEC. 6:~~

33 SEC. 9. Section 22904 of the Business and Professions Code  
34 is amended to read:

35 22904. Every supplier shall provide to its dealers, on an  
36 annual basis, an opportunity to return a portion of their surplus  
37 parts inventory for credit. The surplus procedure shall be  
38 administered as follows:

39 (a) The supplier may notify its dealers of a time period, of at  
40 least 90 days' duration, during which time dealers may submit

1 their surplus parts list and return their surplus parts to the  
2 supplier. ~~The designated period to return parts may be staggered~~  
3 ~~during the year for each dealer at the supplier's option. A~~  
4 ~~supplier may choose to designate a different period of time for~~  
5 ~~each dealer to return surplus parts.~~

6 (b) If a supplier has not notified a dealer of a specific time  
7 period for returning surplus parts within the preceding 12  
8 months, then it shall authorize and allow the dealer's surplus  
9 parts return request within 60 days after receipt of that request  
10 from the dealer.

11 (c) Pursuant to the provisions of this section, a supplier shall  
12 allow surplus parts return authority on a dollar value of parts  
13 equal to 10 percent of the total dollar value of parts purchased by  
14 the dealer from the supplier during the 12-month period  
15 immediately preceding the notification to the dealer by the  
16 supplier of the surplus parts return program, or the month the  
17 dealer's return request is made, whichever is applicable. ~~The~~  
18 ~~dealer may elect to return a dollar value of the dealer's surplus~~  
19 ~~parts equal to less than 10 percent of the total dollar value of~~  
20 ~~parts purchased by the dealer from the supplier during the~~  
21 ~~preceding 12-month period, as provided in this section.~~

22 (d) ~~No obsolete or superseded part may be returned, but any~~  
23 ~~part listed in the supplier's current returnable parts list or any~~  
24 ~~superseded part that has not been the subject of the supplier's~~  
25 ~~parts return program at the date of notification to the dealer by~~  
26 ~~the supplier of the surplus parts return program, or the date of the~~  
27 ~~dealer's parts return request, whichever is applicable, shall be~~  
28 ~~eligible for return and the credit specified. However, returned~~

29 (d) *Returned* parts shall be in new and unused condition and  
30 shall have been purchased by the dealer from the supplier to  
31 whom they are returned, unless no program for the return of that  
32 part has been offered by the supplier.

33 (e) The minimum lawful credit to be allowed for returned parts  
34 shall be 95 percent of the ~~net price~~ *current net parts cost*, as  
35 listed in the supplier's current returnable parts list at the date of  
36 the notification to the dealer by the supplier of the surplus parts  
37 return program, or the date of the dealer's parts return request,  
38 whichever is applicable.

1 ~~(f) Applicable credit, pursuant to this section, shall be issued~~  
2 ~~or furnished to the dealer within 90 days after receipt of the~~  
3 ~~dealer's returned parts by the supplier.~~

4 ~~(g) The provisions of this section shall be supplemental to any~~  
5 ~~agreement between the dealer and the supplier covering the~~  
6 ~~return of repair parts. This section does not prevent a supplier~~  
7 ~~from charging back to the dealer's account amounts previously~~  
8 ~~paid or credited as a discount incident to the dealer's purchase of~~  
9 ~~goods. Any repurchase, pursuant to this section, shall not be~~  
10 ~~subject to the provisions of the bulk sales law.~~

11 ~~(h)~~  
12 *(f) The supplier shall credit the dealer's account within 30*  
13 *days after the supplier's receipt of the dealer's returned parts.*

14 *(g) The annual parts return provided for in this section may be*  
15 *waived by a dealer.*

16 *(h) If a supplier fails or refuses to pay for returned parts*  
17 *covered by this section within 30 days of the supplier's receipt of*  
18 *returned parts, the supplier shall be liable for 110 percent of the*  
19 *total current net parts cost, plus interest at the maximum rate*  
20 *allowed by law from the payment due date until the date of*  
21 *payment, and actual costs for any court or arbitration*  
22 *proceeding, including costs for attorney fees and arbitrators.*

23 ~~SEC. 7.~~

24 *SEC. 10.* Section 22905 of the Business and Professions Code  
25 is amended to read:

26 22905. ~~(a) Whenever a dealer—agreement contract is~~  
27 ~~terminated by cancellation or nonrenewal by the supplier or~~  
28 ~~dealer, the supplier shall repurchase the inventory as provided in~~  
29 ~~this section. In addition, the~~

30 *(a) The supplier shall repurchase at its fair market value or*  
31 *assume the lease responsibilities of any specific data processing*  
32 *hardware that the supplier required the dealer to purchase to*  
33 *satisfy the minimum requirements of the dealer—agreement*  
34 *contract, including computer systems equipment required and*  
35 *approved by the supplier to communicate with the supplier, and*  
36 *repurchase at 75 percent of the net cost specialized repair tools*  
37 *previously purchased, pursuant to requirements of the supplier*  
38 *and held by the dealer on the date of termination. These*  
39 *specialized repair tools shall be unique to the supplier product*  
40 *line and must be complete and in usable condition.*

~~(b) The supplier shall pay 100 percent of the net cost of all new, unsold, undamaged, and complete equipment that is resalable, less a reasonable allowance for depreciation due to usage by the dealer and deterioration attributable to weather conditions at the dealer's location, less all programs and discounts previously allowed and 95 percent of the current net price of all new, unused, and undamaged repair parts and accessories that are listed in the supplier's effective price list or catalog, less all programs and discounts previously allowed by the supplier to the dealer. The supplier. The fair market value of property subject to repurchase shall be deemed to be equal to the acquisition cost, including any shipping, handling and set-up fees, less straight line depreciation of that acquisition cost over three years. If the dealer purchased data processing hardware or software that exceeded the supplier's minimum requirements, the acquisition cost of that data processing hardware or software shall be deemed to be the acquisition cost of hardware or software of similar quality that did not exceed the minimum requirements of the supplier.~~

*(b) The supplier shall pay a sum equal to 100 percent of the net equipment cost of all new, unsold, and undamaged equipment.*

*(c) The supplier shall pay a sum equal to 100 percent of the net equipment cost of all unsold, undamaged demonstrators, less depreciation due to usage of those demonstrators. The depreciation adjustment shall be based on published industry rental rates to the extent those rates are available. Notwithstanding other provisions of law, demonstrators, with hour meters that have less than 50 hours of use shall be considered new, unsold, undamaged equipment subject to repurchase under this section.*

*(d) The supplier shall pay a sum equal to 95 percent of the current net parts costs on new, unsold, undamaged repair parts that had previously been purchased from the supplier and held by the dealer on the date that the dealer contract terminates or expires.*

*(e) The supplier shall also pay the dealer 5 percent of the current net-price parts cost on all new, unused, and undamaged repair parts returned, to cover the cost of handling, packing, and loading. The supplier shall have the option of performing the*

1 ~~handling, packing, and loading of parts in lieu of paying the 5~~  
2 ~~percent charge imposed for these services and in this case of~~  
3 ~~those parts for return to the supplier. The dealer may allow the~~  
4 ~~supplier to perform the handling, packing, and loading of parts~~  
5 ~~instead of receiving the 5 percent payment for these services.~~  
6 ~~When the supplier is chosen to perform these services, the dealer~~  
7 ~~shall make available to the supplier, at the dealer's address or at~~  
8 ~~the places at which it is located, all equipment previously~~  
9 ~~purchased by the dealer.~~

10 ~~(e) The provisions of this section shall not require the~~  
11 ~~repurchase from the dealer of:~~

12 ~~(1) Any repair part that has a limited storage life or is~~  
13 ~~otherwise subject to deterioration.~~

14 ~~(2) Any single repair part that is priced as a set of two or more~~  
15 ~~items.~~

16 ~~(3) Any repair part, which because of its condition, is not~~  
17 ~~resalable as a new part without repairing or reconditioning.~~

18 ~~(4) Any inventory for which the dealer is unable to furnish~~  
19 ~~evidence satisfactory to the supplier, of good title, free and clear~~  
20 ~~of all claims, liens, and encumbrances.~~

21 ~~(5) Any inventory that the dealer desires to keep, including~~  
22 ~~lease or rental equipment outstanding, provided the dealer has a~~  
23 ~~contractual right to do so.~~

24 ~~(6) Any equipment that is not in new, unused, undamaged, and~~  
25 ~~complete condition.~~

26 ~~(7) Any equipment that has been used by the dealer or has~~  
27 ~~deteriorated because of weather conditions at the dealer's~~  
28 ~~location unless the supplier receives an allowance for the usage~~  
29 ~~or deterioration, except demonstrated equipment under 50 hours~~  
30 ~~usage, that is equipped with an hour meter and has not been~~  
31 ~~previously sold, shall be considered as new equipment.~~

32 ~~(8) Any repair parts that are not in new, unused, and~~  
33 ~~undamaged condition.~~

34 ~~(9) Any inventory that was ordered by the dealer on or after~~  
35 ~~the date of receipt of the notification of termination of the dealer~~  
36 ~~agreement.~~

37 ~~(10) Any inventory that was acquired by the dealer from any~~  
38 ~~source other than the supplier, other than a successor in interest~~  
39 ~~provided in Section 22924.~~

40 ~~(d)~~

(f) The supplier shall pay a sum equal to 75 percent of the net equipment cost, including shipping, handling and set-up fees, of all specialized equipment or repair tools previously purchased pursuant to requirements of the supplier prior to the date of the applicable notification of termination or non-renewal of the dealer contract. The specialized equipment or repair tools must be unique to the supplier's product line and must be complete and in operating condition.

(g) Upon the payment or allowance of credit to the dealer's account of the sums required by this section, the title to all inventory purchased shall pass to the supplier making payment, and the supplier shall be entitled to the possession of the inventory. All payments or allowances of credit due to dealers shall be paid or credited within 90 days after receipt by the supplier of property required to be repurchased. Any payments or allowances of credit due to dealers that are not paid within the 90 day period will accrue interest at the maximum rate allowed by law. The supplier may withhold payments due under this section during the period of time in which the dealer fails to comply with its contractual obligations to remove any signage indicating that the dealer is an authorized dealer of the supplier.

(h) The supplier and dealer shall each pay 50 percent of the costs of freight to ship equipment to the nearest retail outlet or to ship repair parts to the nearest supplier distribution center.

(i) The provisions of this section shall not require the repurchase from the dealer of any of the following:

(1) Any repair part that is in a broken or damaged package. However, the supplier shall be required to repurchase a repair part in a broken or damaged package, for a repurchase price that is equal to 85 percent of the current net parts cost for the repair part, if the aggregate current price for the entire package of repair parts is seventy-five dollars (\$75) or higher.

(2) Any repair part that, because of its condition, is not resalable as a new part without reconditioning.

(3) Any inventory for which the dealer is unable to furnish evidence, satisfactory to the supplier, of clear title, free and clear of all claims, liens and encumbrances.

(4) Any inventory that the dealer desires to keep if the dealer has a contractual right to do so.

1     (5) Any equipment or repair parts that are not in new, unsold,  
2     undamaged, complete condition; subject to the provisions of this  
3     act relating to demonstrators.

4     (6) Any equipment or repair parts acquired by the dealer from  
5     any source other than the supplier unless that equipment or  
6     repair parts were ordered from, or invoiced to, the dealer by the  
7     supplier.

8     (7) Any equipment or repair parts that are not returned to the  
9     supplier within 90 days after the latter of (A) the effective date of  
10    termination of a dealer contract or (B) the date the dealer  
11    receives from the supplier all information, documents or  
12    supporting materials required by the supplier to comply with the  
13    supplier's return policy. However, this paragraph shall not be  
14    applicable to a dealer if the supplier did not give the dealer  
15    notice of the 90-day deadline at the time the applicable notice of  
16    termination was sent to the dealer.

17    (j) If any supplier ~~shall fail or refuse~~ fails or refuses to  
18    repurchase any inventory covered under ~~the provisions of this~~  
19    section within 90 days after termination of a dealer ~~agreement~~  
20    contract, the supplier shall be liable for the total amount of 110  
21    percent of the current net ~~price~~ equipment cost of the inventory,  
22    plus any freight charges paid by the dealer, interest ~~at the~~  
23    ~~statutory rate~~ accrued at the maximum rate allowed by law from  
24    the date of shipment to the supplier, ~~and~~ until the date of  
25    payment, 5 percent for handling, packing, and loading, and  
26    actual costs for any court or arbitration proceedings, including  
27    costs for attorney fees and arbitrators.

28    (k) Notwithstanding any provision to the contrary in the  
29    Commercial Code, the dealer shall retain a first and prior lien  
30    against all inventory returned by the dealer to the supplier under  
31    this act until the dealer has paid all amounts owed by the  
32    supplier for the repurchase of inventory required under this act.

33    (l) This section shall not be construed to affect any security  
34    interest that the supplier may have in the inventory of the dealer,  
35    and any repurchase shall not be subject to the provisions of the  
36    bulk sales law or to the claims of any secured or unsecured  
37    creditors of the supplier or any assignee of the supplier until  
38    such time as the dealer has received full payment or credit.



~~SEC. 8.~~

*SEC. 11.* Section 22906 of the Business and Professions Code is amended to read:

22906. (a) A dealer, as defined in subdivision ~~(b)~~ (e) of Section 22901, is not entitled to establish a lien pursuant to this chapter act, unless that person has first sent to the lien debtor a written notice, by certified mail, which states all of the following:

(1) The payment of the reasonable or agreed charges is more than 90 days overdue. This requirement does not apply to equipment subject to repurchase that was returned to the supplier subsequent to return of other equipment also subject to repurchase for which payment is overdue.

(2) The amount of reasonable or agreed charges that are overdue.

(3) The lien debtor has the following three alternatives:

(A) Allow the lien to be filed.

(B) Enter into a consensual security interest in the proceeds, pursuant to the Commercial Code.

(C) Pay the reasonable or agreed charges that are overdue.

(4) The lien debtor has 10 days from receipt of the notice to select an alternative, notify the lien claimant of the alternative selected, and satisfy all of the requirements of the selected alternative. This part of the notice to the lien debtor shall be in 10-point type or bolder.

(5) The lien claimant may file the notice of claim of lien pursuant to this chapter at any time thereafter if the lien debtor does not comply with the requirements of this section.

(b) A dealer who has complied with subdivision (a), has a lien for payment of the repurchase amount payable ~~under subdivision (b)~~ pursuant to subdivisions (b), (c), (d), and (e) of Section 22905 and for the costs of enforcing the lien.

(c) The lien established pursuant to this chapter attaches to the proceeds of any sale of the equipment returned for repurchase.

(d) The amount of charges secured by the lien shall not exceed an amount equal to the reasonable or agreed charges for the equipment ~~as set forth~~ specified in Section 22905.

~~SEC. 9.~~

*SEC. 12.* Section 22907 of the Business and Professions Code is amended to read:

22907. Except as otherwise provided in this ~~chapter act~~, the notice of lien shall remain in effect, and no new notice of claim of lien shall be required in order to maintain the lien, as long as the dealer remains unpaid for the amounts secured by the lien.

*SEC. 13. Section 22908 of the Business and Professions Code is amended to read:*

22908. The lien created by this ~~chapter act~~ shall be perfected and shall be effective upon the filing of a notice claim of lien with the Secretary of State ~~pursuant to this chapter~~.

*SEC. 14. Section 22909 of the Business and Professions Code is amended to read:*

22909. The notice of claim of lien shall contain all of the following information:

- (a) The name and address of the lien claimant.
- (b) The name and address of the lien debtor.
- (c) The location of the property to which the equipment was returned.
- (d) A statement that the payment of reasonable or agreed charges is more than 90 days overdue.
- (e) The amount of the reasonable or agreed charges that are overdue.
- (f) A statement, signed under penalty of perjury, that *includes all of the following:*
  - (1) That the lien claimant sent to the lien debtor the notice required pursuant to subdivision (a) of Section 22906, ~~that~~.
  - (2) That more than 10 days have elapsed since the notice was received by the lien debtor, ~~and that~~.
  - (3) That the lien debtor has not complied with the requirements of subdivision (a) of Section 22906.
- (g) ~~That~~ A statement that the lien claimant has an equipment repurchase lien pursuant to Section 22906.

*SEC. 15. Section 22910 of the Business and Professions Code is amended to read:*

22910. The notice of claim of lien shall be signed by the lien claimant or by a person authorized to sign documents of a similar kind ~~on behalf of~~ by the claimant.

*SEC. 16. Section 22911 of the Business and Professions Code is amended to read:*

22911. The notice of a claim of lien shall be filed on a form which is the standard form for the original financing statement

1 prescribed by the Secretary of State pursuant to Section 9502 of  
2 the Commercial Code. The standard form shall be completed  
3 ~~with the following changes in its entirety except as follows:~~

4 (a) The lien claimant may be identified either as a lien  
5 claimant or as a secured party.

6 (b) The form shall be signed by the lien claimant and need not  
7 be signed by the lien debtor.

8 ~~In the space for the~~ The description of the collateral ~~there~~  
9 shall ~~instead be entered~~ the information specified in subdivisions  
10 (c), (d), (e), and (g) of Section 22909.

11 (d) Attached to the form shall be a separately signed statement  
12 containing the information specified in subdivision (f) of Section  
13 22909.

14 *SEC. 17. Section 22913 of the Business and Professions Code*  
15 *is amended to read:*

16 22913. The lien claimant shall provide written notice of the  
17 claim of lien to the lien debtor within 10 days of the date of filing  
18 the lien with ~~the office of~~ the Secretary of State.

19 *SEC. 18. Section 22915 of the Business and Professions Code*  
20 *is amended to read:*

21 22915. (a) The lien created ~~in this chapter~~ pursuant to this  
22 act shall ~~have~~ be treated according to the following:

23 (1) Have priority in accordance with the time the notice of  
24 claim of lien is filed with the Secretary of State.

25 ~~(b) The lien created pursuant to this chapter shall have~~

26 (2) Have the same priority as a security interest perfected by  
27 the filing of a financing statement as of the date of notice of  
28 claim of lien was filed with the Secretary of State.

29 ~~(c) The lien created pursuant to this chapter shall not~~

30 (3) Not have priority over labor claims for wages and salaries  
31 for personal services which are provided by any employee to any  
32 lien debtor in connection with the equipment supplied, the  
33 proceeds of which are subject to the lien.

34 *SEC. 19. Section 22920 of the Business and Professions Code*  
35 *is amended to read:*

36 22920. (a) When a lien claimant receives payment for the  
37 total amounts secured by the lien, the lien claimant shall send the  
38 lien debtor a statement ~~that he or she no longer claims a~~  
39 *relinquishing the* security interest under the notice of claim of  
40 lien, which shall be identified by the date, names of parties

1 thereto, and file number. If the affected lienholder of record fails  
2 to send the termination statement within 10 days, he or she is  
3 liable to the debtor for all actual damages suffered by the debtor  
4 by reason of this failure, and if that failure is in bad faith, for a  
5 penalty of one hundred dollars (\$100).

6 (b) The filing officer shall mark each termination statement  
7 with the date and time of the filing and shall index the statement  
8 under the name of the lien debtor and under the file number of  
9 the original lien. If the filing officer has ~~a~~ *an electronic*  
10 microfilm or other photographic record of the lien and related  
11 filings, he or she may remove and destroy the originals from the  
12 files ~~at any time~~ after receipt of the termination statement. If the  
13 filing officer does not have the record, he or she may remove and  
14 destroy the originals from the files ~~at any time~~ after one year  
15 ~~after from the~~ receipt of the termination statement.

16 ~~SEC. 10.~~

17 *SEC. 20.* Section 22922 of the Business and Professions Code  
18 is amended to read:

19 22922. (a) Except to the extent specifically set forth in this  
20 ~~chapter act~~, the lien created by this ~~chapter act~~ is subject to  
21 Division 9 (commencing with Section 9101) of the Commercial  
22 Code.

23 (b) For the purposes of this ~~chapter, as used in Division 9~~  
24 ~~(commencing with Section 9101) of the Commercial Code act~~,  
25 the following terms have the following meanings:

26 (1) "Secured party" refers to the dealer, lien creditor, lien  
27 claimant, or assignee thereof ~~under this chapter~~.

28 (2) "Debtor" refers to the supplier, lien debtor, or debtor ~~under~~  
29 ~~this chapter~~.

30 (3) "Collateral" refers to the equipment subject to the lien  
31 created under this chapter.

32 (c) A security agreement is not necessary to make an  
33 equipment repurchase lien created under this chapter enforceable.

34 (d) An equipment repurchase lien created under this chapter  
35 shall not continue in the repurchased equipment following the  
36 disposition thereof.

37 (e) The right of a dealer to enforce the lien created under this  
38 ~~chapter act~~ shall be governed by this ~~chapter act~~ and shall not be  
39 governed by Chapter 6 (commencing with Section 9601) of  
40 Division 9 of the Commercial Code.

~~SEC. 11.~~

*SEC. 21.* Section 22924 of the Business and Professions Code is amended to read:

22924. (a) In the event of the death or incapacity of the dealer, which in this context shall mean an owner, equal or majority partner, or the majority stockholder of a corporation, operating as a dealer, the supplier shall, at the option of the heirs at law, if the dealer died intestate, or the executor under the terms of the deceased dealer's last will and testament, if the dealer died testate, repurchase the inventory from the estate as if the supplier had terminated the dealer ~~agreement~~ *contract* and the inventory repurchase provisions of Section 22905 are applicable. The heirs or executor shall have ~~six months~~ *180 days* from the date of the death of the dealer or majority stockholder to exercise the option under this section. However, nothing in this section shall require the repurchase of inventory, if the heirs or executor and the supplier enter into a new dealer agreement, or if a successor to the dealer is established pursuant to ~~subparagraph (B) of paragraph (10) of subdivision (a) of Section 22902 subdivision (b) of Section 22903.1.~~ This section shall be subject to that portion of the ~~supplier's agreement with the dealer~~ *dealer contract* pertaining to death of the dealer or succession, to the extent the ~~agreement~~ *contract* is not inconsistent. Nothing in this section shall entitle an heir or personal representative of a deceased dealer or majority stockholder to operate the dealership beyond the ~~six months~~ *180 days* provided for in this subdivision without the consent of the supplier.

(b) The provisions of this section shall be supplemental to any agreement between the dealer and the supplier covering the return of equipment, attachments, and repair parts. Notwithstanding anything contained in this section, the rights of a supplier to charge back to the dealer's account amounts previously paid or credited as a discount incident to the dealer's purchase of inventory shall not be affected. Further, any repurchase shall not be subject to the provisions of the bulk sales law.

~~SEC. 12.~~

*SEC. 22.* Section 22925 of the Business and Professions Code is amended to read:

1     22925. Any dealer may bring an action against a supplier in  
2 any court of competent jurisdiction for damages sustained by the  
3 dealer as a consequence of the supplier's violation of any  
4 provisions of this chapter, together with costs and reasonable  
5 attorney's fees. The dealer may also be granted injunctive relief  
6 against unlawful termination, cancellation, nonrenewal, and  
7 change in competitive circumstances. The remedies set forth in  
8 this action shall not be deemed exclusive and shall be in addition  
9 to any other remedies permitted by law. This section is not  
10 intended to affect current law pertaining to product liability  
11 actions.

12     *SEC. 23. Section 22926 of the Business and Professions Code*  
13 *is amended to read:*

14     22926. If any provision of this ~~chapter act~~ or the application  
15 thereof to any person or circumstances is held invalid, that  
16 invalidity shall not affect other provisions or applications of this  
17 ~~chapter act~~ which can be given effect without the invalid  
18 provision or application, and to this end the provisions of this  
19 ~~chapter act~~ are severable.

20     *SEC. 24. Section 22927 of the Business and Professions Code*  
21 *is amended to read:*

22     22927. This act shall apply to dealer ~~agreements~~ *contracts* in  
23 effect on the effective date of this ~~chapter act~~ that have no  
24 expiration date and that are continuing ~~agreements~~ *contracts*, and  
25 all other dealer ~~agreements~~ *contracts* entered into or renewed on  
26 or after the effective date of this ~~chapter act~~.

27     A provision in any contract or agreement with respect to a  
28 supplier that requires jurisdiction or venue or forum outside of  
29 this state or requires the application of the laws of another state is  
30 void with respect to a claim otherwise enforceable under this  
31 ~~chapter act~~.